

Message Text

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ORIGIN L-03

INFO OCT-01 EUR-25 ISO-00 CIAE-00 COME-00 DODE-00 DOTE-00

EB-11 FMC-04 INR-10 NSAE-00 RSC-01 CG-00 COA-02

DLOS-07 SWF-02 AID-20 CEA-02 EA-11 FRB-02 IO-14

NEA-14 OPIC-12 SP-03 TRSE-00 CIEP-02 LAB-06 SIL-01

OMB-01 TAR-02 AGR-20 OIC-04 STR-08 AF-10 ARA-16 /214 R

DRAFTED BY L/EB:FWILLIS:JM

APPROVED BY EB/MA:RAWEBB

TREAS:MBLAKE(SUB)

EUR/RPE:WCLARKE(SUB)

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P 092207Z JUL 74

FM SECSTATE WASHDC

TO USMISSION OECD PARIS PRIORITY

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E.O.11652: N/A

TAGS:ETRN, EFIN, OECD, UNCTAD

SUBJECT: SHIPPING: STUDIES OF UN LINER CONFERENCE CODE

BY INVISIBLES COMMITTEE

REFERENCE: STATE 144455

1. FOLLOWING QUESTIONS ARE SUGGESTED FOR USE IN
FORMULATION OF STUDY OUTLINE ON COMPATIBILITY OF OECD
INVISIBLES AND LINER CONFERENCE CODES. YOU HAVE DISCRETION
TO USE OR NOT USE THESE IN MANNER YOU FIND MOST APPROPRIATE
GIVEN MANNER OF PROCEEDINGS IN SETTING UP STUDY OUTLINE.
ANSWERS TO SOME QUESTIONS ARE CLOSE TO OBVIOUS, QUESTIONS
BEING ALMOST RETORICAL; NONETHELESS, WE FEEL IT MAY BE
HELPFUL TO RAISE THEM FOR PURPOSE OF DIRECTING STUDY
CONCLUSIONS TO CLEAR ANSWERS THAT LINER CODE POSES SERIOUS
PROBLEM OF INCOMPATIBILITY WITH OECD CODE WHICH CANNOT BE
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RESOLVED IF OECD MEMBER ADHERES TO LINER CODE OR CAN ONLY

BE RESOLVED BY EXTENSIVE RESERVATIONS TO MOST IMPORTANT PROVISIONS OF LATTER. USE OF QUESTIONS SEEN AS TACTIC TO COUNTER BALANCE ANY DISTORTION IN DIRECTION OF STUDY WHICH MIGHT RESULT FROM APPARENT FRENCH TACTICS IN PROVIDING THEIR LIST OF QUESTIONS.

2. QUESTIONS FOLLOW:

(A) ARTICLE 1(A) OF THE OECD CODE PROVIDES THAT "MEMBERS SHALL ELIMINATE ... RESTRICTIONS ON CURRENT INVISIBLE TRANSACTIONS AND TRANSFERS ..."--WOULD THE "RESTRICTIONS" REFERRED TO INCLUDE GOVERNMENTAL MEASURES (LEGISLATIVE OR REGULATORY) TO IMPLEMENT THE LINER CODE (IN ACCORDANCE WITH ARTICLE 47 OF THE LINER CODE) WHICH ENFORCE SUCH RESTRICTIVE PROVISIONS AS THE CODE MIGHT HAVE?

(B) TAKING INTO ACCOUNT ARTICLES 1(A), 1(B) AND 2(B) OF THE OECD CODE, IS IT POSSIBLE TO LODGE A RESERVATION TO THE OECD CODE IN THE EVENT OF INCOMPATIBILITY WITH THE LINER CODE OR IS THIS NOT PERMITTED (IN WHICH CASE A STATE WOULD HAVE TO TURN TO THE PROVISIONS OF THE LINER CODE TO RESOLVE PROBLEMS OF INCOMPATIBILITY)? BEGIN FYI. IN ACCORDANCE WITH RULES OF INTERNATIONAL LAW, CODIFIED IN ARTICLE 19 OF THE VIENNA CONVENTION ON THE LAW OF TREATIES, RESERVATIONS, TO THE LINER CODE PERMITTED THIS CONFIRMED BY LEG. HISTORY AT UNCTAD CONFERENCE. END FYI

(C) DO PARAGRAPHS (A), (B) OR (C) OF ARTICLE 7 OF THE OECD CODE PROVIDE ANY BASIS FOR RESOLVING INCOMPATIBILITIES BETWEEN THE OECD CODE AND THE LINER CODE, OR DO PARAGRAPHS (D) AND (E) OF THE SAME ARTICLE INDICATE THAT A STATE'S BECOMING PARTY TO A MULTILATERAL INSTRUMENT REQUIRING RESTRICTIVE GOVERNMENTAL MEASURES IS OUTSIDE THE SCOPE OF PERMISSIBLE STATE ACTION CONTEMPLATED BY THIS ARTICLE?

(D) ARTICLE 47 OF THE LINER CODE REQUIRES A POSITIVE GOVERNMENT ROLE (LEGISLATION OR REGULATION) TO ENSURE OBSERVANCE OF LINER CODE PROVISIONS; DOES THIS FACTOR, LIMITED OFFICIAL USE

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ALONE, THEREBY CREATE A CONFLICT WITH THE OECD CODE IF ANY LINER CODE PROVISIONS ARE INCONSISTENT WITH THE OECD CODE? SISCO

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MARINE TRANSPORTATION, COMMITTEE MEETINGS, INVISIBLES (BALANCE OF PAYMENTS), COMMUNICATIONS TRAFFIC
Control Number: n/a
Copy: SINGLE
Draft Date: 09 JUL 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: golinofr
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE147769
Document Source: CORE
Document Unique ID: 00
Drafter: FWILLIS:JM
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740182-0886
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740763/aaaaccl.tel
Line Count: 110
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: STATE 144455
Review Action: RELEASED, APPROVED
Review Authority: golinofr
Review Comment: n/a
Review Content Flags:
Review Date: 20 MAR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <20 MAR 2002 by izenbei0>; APPROVED <13 MAY 2002 by golinofr>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: SHIPPING: STUDIES OF UN LINER CONFERENCE CODE BY INVISIBLES COMMITTEE
TAGS: ETRN, EFIN, OECD, UNCTAD
To: OECD PARIS
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005